

SENATE RESOLUTION NO. 1118

WHEREAS, the New Source Review Program under the Federal Clean Air Act has been seen by some as confusing, in need of clarification and has been the subject of debate over many years; and

WHEREAS, the primary source of confusion involves questions over definitions within the federal regulations, namely "modification", "repair", and "routine maintenance"; and

WHEREAS, further evidence of confusion and lack of objective standards within the federal regulations can be seen in the numerous lawsuits which have been filed in recent years by the Environmental Protection Agency challenging work performed by individuals as violations of the New Source Review Rule; and

WHEREAS, on October 27, 2003, the EPA published a rule that provided some clarification, the Equipment Replacement Provision, 68 C.F.R. Section 61, 248-61, 280; and

WHEREAS, the Equipment Replacement Provision provides a bright line test for determining when the replacement of broken or deteriorating equipment is "routine"; and

WHEREAS, the Equipment Replacement Provision provides states and industry with definitive standards for judging source "modifications"; and

WHEREAS, the state of New York, along with eleven other states, filed suit in an action styled *State of New York, et al v. U.S. EPA*, No. 03-01380 (D.D.C., 2003), to have this new rule declared invalid; and

WHEREAS, it is believed that the new rule provides the clarity with which the regulated community deserves to possess when considering improvements to individual operating facilities; and

WHEREAS, it is believed that the EPA's Equipment Replacement Provision should remain in full force and effect, providing the regulated community with the clarity and objective standards needed to conduct business in an appropriate manner; and

WHEREAS, the Missouri Department of Natural Resources is currently working to adopt new state rules that will comply with the New Sources Review Program under the Federal Clean Air Act on an expedited basis; and

WHEREAS, the availability of state rules that are compliant with the Federal Clean Air Act is vital to the retention and creation of industrial jobs in Missouri; and

NOW THEREFORE BE IT RESOLVED that the members of the Missouri Senate, Ninety-Second General Assembly, Second Regular Session, hereby urge the validation of the rule as promulgated by the EPA known as the Equipment Replacement Provision set forth in 68 C.F.R. Section 61,248-61,280, so as to provide necessary clarity to the regulated community as to what constitutes routine maintenance and modification; and

BE IT FURTHER RESOLVED that the Senate commits to join in the Motion to Intervene in the

lawsuit styled *State of New York, et al v. U.S. EPA*, No. 03-01380 (D.D.C., 2003), in support of the EPA rule.

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